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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,976	05/24/2001	Evan E. Koslow	369.7217USU	3444
30546	7590	11/23/2004	EXAMINER	
SHIRLEY S. MA KX INDUSTRIES, L.P. 269 S. LAMBERT ROAD ORANGE, CT 06477			BOYD, JENNIFER A	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/864,976

Applicant(s)

KOSLOW, EVAN E.

Examiner

Jennifer A Boyd

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: it is not persuasive. The Applicant argues that the composite in independent claims 1, 17 and 21 contain a liquid. The current claim language states that the three-dimensional array of elongated channels within the composite are formed after the super-absorbent polymer particles contact a liquid. It should be noted that the claim does not positively recite that a liquid is present in the composite, but instead only states that the channels would form upon contact with a liquid. Additionally, Koslow teaches that the composite can be used for absorbent products, implying that the composite contacts a liquid during use. The Examiner respectfully submits that the end product of the present invention and Koslow is the same. It should be noted that the Applicant is attempting to introduce method limitations into an article claim. Because the claim is drawn to an article, the Examiner is not required to give weight to how the channels are made, only that the channels are present in the final product absent any evidence that would determine that the channels of Koslow are different structurally and behave differently than the channels of the present invention. Additionally, the Applicant has failed to differentiate the structure or composition of the SAP particles from the prior art. The prior art has met the limitations of a bonded mixture comprising a mixture of binder particles and super-absorbent polymer particles (Koslow, column 2, lines 35 - 45). The Applicant has given no other physical limitations for comparison to the prior art for the bonded mixture, therefore, the Examiner assumes that the "spontaneous channel forming" property would be inherent. If said property is not inherent, it is asserted that Applicant's claims must be incomplete. In other words, if Applicant's asserts a lack of inherency in the prior art product, then Applicant's claimed invention is missing an element that is critical to the invention, which would patentably distinguish it from the known prior art. ~~It~~ It is suggested to the Applicant to provide additional details in the claims that would physically differentiate the prior art product from the instant invention rather than merely stating properties that result from a particular presently unknown structure. The Applicant has indicated in the Specification that certain types of SAP exhibit the claimed property (Specification, page 5, paragraph 5) such as SAP grade SP-1224. Once again, it is highly suggested to include this in the independent claim limitations along with any other structural features that would cause the spontaneous "channel forming property".

Just Burn
November 16, 2004

*The response filed November 5 is non-compliant due to incorrect status identifiers.
Please replace "previously added" with "previously presented".*



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